92-1542

Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

LORENZO W. TIJERINA,
Petitioner,

v.

YVONNE Q. STOWBRIDGE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI OF PETITIONER

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Dated: March 22, 1993

QUESTIONS PRESENTED

1. Whether or not petitioner's Fed. R. Civ. P. Rule 60(b) Motion was timely filed and supported with enough evidence to support petitioner's allegation that a fraud had been perpetrated upon the U.S. District Court by an officer of the Court, namely Mr. Ted Kavrukov, the respondent's "expert witness"?

2. Whether or not the U.S. District Court for the Eastern District of Virginia Alexandria Division and the U.S. Court of Appeals for the Fourth Circuit arbitrarily and capriciously applied a double standard against the respondent when it denied the respondent's Fed. R. Civ. P. Rule 60(b) Motion, effectively, abridging the respondent's privileges and immunities and due process as guaranteed by the U.S.

Constitution, the Fed. R. Civ. P., Virginia Constitution and the State of Virginia Statutes and case Law?

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ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI OF PETITIONER LORENZO W. TIJERINA

Petitioner Lorenzo W. Tijerina (hereinafter "Tijerina") hereby petitions this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fourth Circuit affirming the U.S. District Court for the Eastern District of Virginia Alexandria Division denying

petitioner's Fed. R. Civ. P. Rule 60(b) Motion.

OPINIONS BELOW

The December 23, 1992, opinion of the Court of Appeals for the Fourth Circuit appears at Appendix A to this petition. The July 28, 1992, opinion of the Court of Appeals for the Fourth appears at Appendix B to this petition. The June 13, 1991, Order of the U.S. District Court's denying petitioner's Motion for Judgment notwithstanding the verdict appears at Appendix C to this petition. The May 30, 1991, judgment of the U.S. District appears at Appendix D to this petition. The January 2, 1991 Scheduling Order of the U.S. District Court at Appendix E to this petition. The August 2, 1991, decision of the Virginia Court of Appeals on Rehearing of the respondent's petition at Appendix E to this petition. The June 18, 1991 opinion

of the Virginia Court of Appeals on respondent's appeal at Appendix F to this petition. The May 14, 1991 memorandum opinion of the Virginia Court of Appeals at Appendix G to this petition. The July 20, 1991 Decree of divorce in Stowbridge v. Stowbridge, Chancery No. 110882, in the Circuit Court of Fairfax County Virginia at Appendix H to this petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on December 23, 1992. Accordingly, this Court's jurisdiction is invoked under Title 28, U.S.C. Sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 U.S.C. Sec. 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or

value of $50,000, exclusive of interest and cost, and is between--

(1) Citizens of different States;

(2) citizens of a State and citizen or subject of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title [28 U.S.C.S. Sec. 1603(a)], as plaintiff and citizen of a State or of different States.

Rule 1:15 of the Rules of the Supreme Court of Virginia which provides in relevant part:

> "Counsel of record" includes a counsel or party who has signed a pleading in the case or who has notified the other parties and the clerk in writing that he appears in the case. Counsel of record shall not

withdraw from a case except by leave of court after notice to the client or the time and place of a motion for leave to withdraw.

Rule 60(b) of the Fed. R. Civ. P. provides in relevant part:

(b) Mistake Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic),

misrepresentation, or other misconduct of an adverse party;...(6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

And, fraud as defined in United States v. International Tel. & Tel. Corp., 349 F.Supp 22 (1972) the District Court held that if an attorney was implicated in the fabrication of evidence by a party, such implication could constitute fraud upon the Court.

While, at H.K. Porter Co. v. Goodyear Tire and Rubber Co., 536 F.2d 1115 (1976), the Court of Appeals held that attorneys are officers of the Court and that their allegedly dishonest conduct involving misrepresentations and/or perjury would

constitute fraud upon the Court.

Statement of the Case

Petitioner, Tijerina, is a member of the Pennsylvania Bar who maintains an Immigration Law office in Arlington, Virginia.

Respondent, Mrs. Yvonne Q. Stowbridge, is a law school graduate who at the time of bringing this action lived in Puerto Rico, with her daughter Carla, so as to evade the jurisdiction of the Virginia Fairfax County Circuit Court.

In May of 1989, respondent, engaged Mr. Kavrukov, a Virginia attorney, to represent her as her attorney in her divorce and custody suit in the Circuit Court of Fairfax County, Virginia. Because of respondent's medical history and attempted suicide she was granted temporary custody of her younger daughter Carla and only telephone visitation with her older daughter Andrea. Weekend and

Summer visitation with Carla was granted to Mr. Stowbridge.

Respondent was ordered by the Circuit Court of Fairfax County to undergo psychological evaluation *via* a Dr. Samenow. However, instead of submitting to the ordered evaluation respondent moved herself and Carla to Puerto Rico so as not to have to comply with the Circuit Court's Order.

In May of 1990, Mr. Stowbridge filed for a final decree of divorce and permanent custody of both Andrea and Carla. Upon learning of Mr. Stowbridge's petition, respondent filed suit in Puerto Rico for divorce and custody of Carla.

On June 1, 1990, respondent contacted petitioner *via* telephone, through her attorney in Puerto Rico, to have Mr. Stowbridge served with her "emergency Complaint for divorce". However, respondent claims she retained petitioner to represent her in the June 8, 1990, proceeding, before

the Circuit Court of Fairfax County in Virginia in reference to her husband's final decree of divorce and permanent custody of both Andrea and Carla.

At the June 8, 1990 proceeding, respondent was represented by her attorney of record, Mr. Ted Kavrukov, who failed to appear in her behalf. Mr. Kavrukov testified on the record that he had withdrawn from the underlying case, Stowbridge, supra. However, a transcript of the July 20, 1990 proceeding, proves differently. The Honorable Judge Quinlan H. Hancock did not allow Mr. Kavrukov to withdraw as respondent's attorney on June 8, 1990.

Furthermore, at the June 8, 1990 hearing, Judge Hancock did not execute the final decree of divorce for Mr. Stowbridge or grant permanent custody of Andrea and Carla to Mr. Stowbridge. Instead, Judge Hancock instructed Mr. Cook, Mr. Stowbridge's

attorney, to communicate to Mr. Kavrukov his non withdrawal from Stowbridge and if unsuccessful to return to the Court and then he, Judge Hancock, would execute the decree of final divorce with the permanent custody provisions.

On July 20, 1990, Mr. Stowbridge obtained his decree of final divorce and permanent custody of both Carla and Andrea. The record of the underlying case clearly reflects that respondent was still represented by Mr. Kavrukov and Mr. William D. Patkus. Again, Mr. Kavrukov failed to appear. However, Mr. Patkus did argue for a continuance, which was denied.

In November, 1990, respondent brought the instant action against petitioner claiming legal malpractice, fraud and negligence.

In May, 1991, trial was held and the jury ruled in favor of respondent. At the close of respondent's case in-chief, petitioner

moved for a direct verdict, which the Court denied

In June, 1991, petitioner filed his Motion for judgment not withstanding the verdict. Petitioner's Motion was denied.

In July, 1991, petitioner filed his Notice of Appeal. In July, 1992, the Court of Appeals affirmed the District Court's order.

On June 1, 1992, petitioner filed a Fed. R. Civ. P. Rule 60(b) Motion alleging that: Respondent's claim of surprise as to the respondent's "expert witness" during the trial was in-fact genuine. Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) had been discovered. A fraud had been perpetrated upon the District Court by an officer of the Court, namely Ted Kavrukov a Virginia attorney. Petitioner's Motion was denied.

In July, 1992, petitioner, appealed the District Court denial of his Rule 60(b) Motion, and on December 23, 1992, the Court of Appeals affirmed the District Court's decision. Consequently, the instant appeal is taken.

A. Whether Or Not Petitioner's Rule 60(b) Motion Was Timely Filed Where Fraud Is An Issue _____ .

In its decision of December 23, 1992, the Court of Appeals For the Fourth Circuit affirmed the District Court's Holding denying petitioner's Fed. R. Civ. P. Rule 60(b) Motion [herein after referred to as Rule 60(b) Motion] on the ground that "...he did not file within a reasonable time. See McLawhorn v. John W. Daniel & Co., 924 F.2d 535, 538 (4th Cir. 1991); Central Operating Co. v. Utility Workers of America, 491 F.2d 245, 253 (4th Cir. 1974)." Notwithstanding, the fact that the Court of Appeals found

that the petitioner did in-fact file his Rule 60(b) Motion within one year of the jury verdict as required by the Rule.

As to the issues of timeliness and fraud upon the Court, petitioner alleged in his Rule 60(b) Motion that the respondent's "expert witness" and an officer of the Court perpetrated a fraud upon the District Court by lying on the witness stand. Petitioner cited Tas International Travel Service, Inc. v. Pan American World Airways, Inc., 96 FRD 205, 36 FR Serv.2d 1129 (SD NY 1982), where the District Court held that where movant's Rule 60(b) Motion is based on "...alleged perjurious testimony [movant] is not subject to due diligence standard." In the instant case, the movant-petitioner, clearly demonstrated that Mr. Ted Kavrukov, respondent's "expert witness" and only witness, the Virginia attorney in respondent's underlying case Stowbridge v.

Stowbridge, Chancery No. 110882, Circuit Court for Fairfax County, Fairfax, Virginia, lied about not being the respondent's attorney on June 8th, 1990, the date respondent alleges she lost custody of her minor child, Carla, to Carla's father. (See Appendix I, which was also submitted with petitioner's Rule 60(b) Motion to the U.S. District Court and with petitioner's appeal to the Court of Appeals as Exhibit A).

Effectively, Appendix I, reflects that Kavrukov was not allowed to withdraw on June 8, 1990, as respondent's attorney. Nevertheless, Kavrukov testified in the District Court, that he was allowed to withdraw as respondent's attorney from the respondent's underlying case, Stowbridge, supra. In fact, Kavrukov violated Rule 1:5 of the Rules Of The Supreme Court Of Virginia, which requires that: "Counsel of record shall not withdraw from a case except

by leave of court after notice to the client of the time and place of a motion for leave to withdraw."

Consequently, upon Kavrukov's intentional failure to acquire leave of Court in Stowbridge he became liable not only to the Court but also personally liable to his client, the respondent. The fact is unescapable that Kavrukov walked away from the Court when Stowbridge came to be heard before the Honorable Judge Quinlan H. Hancock, on June 8th and July 20, 1990. [See Appendix I, p. I-28, line 5-11, p. I-29, p. I-30, lines 1 and 2; also see Virginia Dep't of Cors. v. Crowley, 227 Va. 254, 316 S.E.2d 439 (1984); Davis v. Commonwealth, 215 Va. 816, 213 S.E.2d 785 (1975); Autry v. Bryan, 224 Va. 451, 297 S.E.2d 690 (1982)].

Therefore, in light of the fact that, the respondent was awarded a judgment based on

perjured testimony by Kavrukov, respondent's "expert witness", in order that he might escape liability; and, the fact that petitioner's allegations in his Rule 60(b) Motion is supported by the Virginia State Court Transcript, petitioner's Motion should have been granted; but for, the District Court's abuse of discretion.

B. Whether Due Diligence On Part Of The Movant To Discover New Evidence Is Shown Or May Be Inferred _____ .

The Docket Sheet in the instant case clearly reflects that the petitioner filed his First Set Of Interrogatories on March 8, 1990, and on March 11, 1990, petitioner filed his First Request For Production Of Documents. In said Interrogatories, petitioner requested the identity of any expert witness the respondent was going to call, a summary of the expert witness' testimony and the documents upon which the

expert witness would in-fact testify to. On March 21, 1990, respondent's attorney submitted the Witness List at Appendix K, p. K-1. Said List is void of any expert witness.

Accordingly, respondent should have been barred from calling Kavrukov as an expert witness as per the Scheduling Order at Appendix E, p. E-1. Clearly, the District Court applied a double standard that prejudiced the petitioner's case by making respondent utilize Kavrukov as an expert witness. (See District Court Transcript, p. 145, lines 1-3 inclusive). Effectively, the respondent entered the District Court on the day of trial to try a fraud, malpractice, and gross negligence case without an expert witness as required. However, the District Court in turn, over petitioner's objections, made the respondent adopt Kavrukov, an interested person as to the out come of the

case at Bar, as an "expert witness" who intentionally perjured himself. (See District Court Transcript, p. 157, lines 11-23 inclusive, p. 165, lines 18-23 inclusive, p. 166, lines 1-15 inclusive).

As to the State Court Transcript at Appendix I, Tas International Travel Service, Inc., supra, holds where movant Rule 60(b) Motion is grounded on "...alleged perjurious testimony is not subject to due diligence standard." Effectively, petitioner did make a timely request for the identity of expert witnesses, the Scheduling Order provides for no surprises as to witnesses especially expert witnesses. The respondent entered the District Court on the day of trial without an expert witness, whose testimony is required in malpractice and negligence cases, and the "expert witness" was an interested witness who did in-fact perjury himself.

Upon the Court's direction, respondent was forced to adopted her Virginia attorney, an officer of the Court, as her "expert witness" who is an interested person and who clearly appears to have committed perjury. Consequently, the District Court clearly abused its discretion when it allowed Kavrukov to testify over petitioner's objection and to petitioner's surprise.

C. Whether The Evidence Was Discovered Following The Trial _____ .

The complete file and transcript at petitioner's Appendix I, was not a public document and/or record on May 29th and 30th, 1991. The case file was held by the Judges of the Virginia Court of Appeals. Said Court did not release the file of the underlying case, Stowbridge v. Stowbridge, supra, because the Court was actively trying to decide the issues on appeal. The Virginia Court of Appeals did not release

the Stowbridge file until August, 2, 1991. (See Appendices F and G). Furthermore, petitioner did in-fact timely file discovery, i.e., within the time set in the Court's Scheduling Order. (See Docketing Sheet at March 22, 1991).

Effectively, the transcript at Appendix I, was in the respondent's complete dominion and control; was in-fact discovered after the instant trial; and, presents evidence which is not merely cumulative or impeaching. In-fact the transcript was presented to establish that a fraud appears to have been perpetrated upon the District Court by an officer of the Court whose testimony was material; and, if petitioner would have been granted a new trial due to perjured testimony would probably produce new results.

D. Whether The Evidence Is Not Merely Cumulative Or Impeaching _____ .

In the instant case, Kavrukov's testimony is crucial since the District Court made respondent's present attorney, Mr. Patkus, qualify Kavrukov as an expert witness to the petitioner's surprise and over petitioner's objection. Notwithstanding, the fact that Patkus stated on the record that Kavrukov was not an expert witness. (See Transcript at p. 144, lines 1-23 inclusive, p. 145, lines 1-3 inclusive). The District Court not only allowed Kavrukov to be considered an expert witness but adopted Kavrukov's false statements that he was allowed to withdraw from the underlying case. (See District Court's Transcript, p. 153, lines 9-23 inclusive).

At trial in the District Court, Kavrukov's was respondent's only witness to testify and he was not cited as an expert witness as required by the District Court's Scheduling Order of January 2, 1991. (See

Appendix E, p. E-2 and E-3). Specifically, the Scheduling Order provides that:

> No witness or exhibit not so listed and filed will be permitted at trial except for impeachment or rebuttal purposes. No witness, expert or otherwise, will be permitted to testify who, in response to a request for his identity, has not been identified in time to allow his deposition to be taken or the substance of his knowledge ascertained, or in the case of an expert, to allow the facts relied upon and opinions held by him to be obtained by F. R. Civ. P. 26(b)(4)(A) or deposition prior to the discovery cutoff.

Furthermore, respondent's Witness List is void of any expert witness as required to be cited by the Court's Scheduling Order. (See Appendix K, p. K-1). Effectively, petitioner did not have to impeach Kavrukov

since Kavrukov lied about not having to represent respondent and not noticed as to respondent's case before the Virginia Fairfax County Circuit Court. (See Appendix I, p. I-27, lines 20-23 inclusive; p. I-28; p. I-29 and p. I-30, line 1).

E. The Evidence Is Material

There is no question that the evidence is material. Respondent alleges in her complaint that she was not represented at the June 8, 1990, State Court Proceeding. The State Court Transcript reflects that the respondent was in fact represented by her own "expert witness", Kavrukov, who took it upon himself to walk away from the proceeding. (See Appendix I, p. I-27, lines 20-23 inclusive; p. I-28; p. I-29 and p. I-30, line 1). And, because of Kavrukov's absence nothing was heard as to Stowbridge on June 8, 1990. (See District Court Transcript, p. 154, lines 14-23 inclusive;

p. 155, lines 1-10 inclusive; and, Appendix I, p. I-27, lines 20-23 inclusive; p. I-28; p. I-29 and p. I-30, line 1). Furthermore, Appendix I clearly shows that Kavrukov is a witness with an interest in the outcome of the instant case and that Kavrukov violated Rule 1:5 of the Rules Of The Supreme Court Of Virginia.

The respondent did not properly submit Kavrukov as an expert witness as required by the District Court's Scheduling Order. As a matter of fact, it was the Court that informed Patkus, respondent's attorney, that respondent is required to present expert testimony in her malpractice and negligence claims. (See District Court Transcript, p. 141, lines 10-22 inclusive; p. 142, lines 1-2 inclusive). However, the Court would not dismiss respondent's claim upon petitioner's objection to Kavrukov or motions after respondent rested. (See District Court

Transcript pp. 18-30, lines 1-14 inclusive, p. 266, lines 16-23 inclusive; pp. 267-269, line 9 inclusive). Instead, the Bench adopted Kavrukov as an expert witness. Notwithstanding, the fact that: (a) During a recess, while Kavrukov was testifying, he and Patkus were observed by a Mr. Arthur P. Lander, Attorney, located at 614 S. 19th Street, Arlington, VA 22203, reading and discussing Stewart v. Hall, 770 F.2d 1267 (4th Cir. 1985), the case the Court suggested respondent read. (See District Court Transcript, p. 146, line 20-23 inclusive; p. 183, lines 6-23 inclusive; pp. 184-187, line 7 inclusive). (b) Kavrukov was in-fact respondent's attorney in the underlying State case, Stowbridge, supra. (See Appendix I). (c) The Virginia State Court Of Appeals held that respondent was in-fact represented by Kavrukov in the underlying State case, Stowbridge, supra.

(See Appendices F, G and I). (d) Kavrukov did not effectively withdraw from the underlying case as he testified in the District Court. (See Appendix I).

The fact that a fraud has been perpetrated upon the District Court by an officer of the Court, as the "expert witness" in a malpractice and negligence case is material to the outcome of respondent's claims and petitioner's instant Writ. Clearly, the petitioner provided the Federal District Court as well as the Court Of Appeals with enough evidence to support his claim that a fraud has been perpetrated upon the Court by an officer of said Court. However, both the Federal District Court and the Court of Appeals chose to ignore the evidence filed with petitioner's Rule 60(b) Motion and deny him equity.

Effectively, the District Court abused its discretion in light of petitioner's

evidence that a fraud has been perpetrated upon the Court by an officer of the Court.

F. The Evidence Is Such That A New Trial Would Probably Produce New Results.

In the instant case, because respondent's "expert witness" is in-fact an interested witness, who could be held liable to the respondent, the District Court should not have allowed him to testify as an expert witness. Furthermore, the record is crystal clear that Kavrukov did in-fact perjure his testimony and he being made to testify as an "expert witness" surprised petitioner. (See District Court Transcript, p. 145, lines 1-13 inclusive; p. 152, lines 9-19 inclusive; Appendix I, p. I-29, lines 12-18 inclusive). I.E., Kavrukov was not permitted to withdraw from the underlying case as he testified nor was he offered as an expert witness at anytime prior to being call to testify. Furthermore, Kavrukov knew he was not

allowed to withdraw as provided at Rule 1:5 of the Rules Of The Supreme Court Of Virginia; and, that the June 8th, 1990 Virginia State Proceeding at which respondent alleges she lost custody of her minor child did not take place as Kavrukov testified. (See Appendix I, p. I-29, lines 12-18 inclusive; and, District Court Transcript, p. 153, lines 13-23 inclusive; pp. 154-155, line 9). Effectively, the evidence in the State Court Transcript clearly reflects that the respondent was in-fact represented by her "expert witness", that she in-fact did not lose custody of her minor child, Carla on June 8, 1990, that respondent was in-fact represented by Patkus on July 20, 1990, that respondent was in fact in contempt of the Fairfax County Circuit Court Order, and that respondent failed to prove her case in accordance to the Holding in Stewart v. Hall, 770 F.2d

1267 (4th Cir. 1985). There is little, if any, doubt that; but for Kavrukov's perjured testimony a new trial would have produced new results.

G. Whether Or Not The U.S. District Court Arbitrarily And Capriciously Exercised Subject Matter Jurisdiction In The Instant Case In Light Of The Fact That The Respondent Did Not Suffer Damages Of At Least $50,000.00 As Required By 28 U.S.C. Sec. 1332, Over Petitioner's Challenge Via A Motion To Dismiss _____ .

The Supreme Court of Virginia held in Allied Productions, Inc. v. Duesterdick, 232 S.E.2d 774 (1977), that:

> When a client has suffered a judgment of money damages as the proximate result of his attorney's negligence, such judgment constitutes

actual damages recoverable in a suit for legal malpractice to the extent that the judgment has been paid.

Motion for judgment seeking damages for legal malpractice which did not allege any actual damages failed to state a claim of action.

Furthermore, 28 U.S.C. Sec. 1332 requires that where the Federal District Court exercises jurisdiction in diversity cases the matter in controversy exceed the sum of or value of $50,000 (exclusive of interest and cost). The record clearly shows that the respondent did not suffer the required $50,000.00 amount.

At page 90, lines 15-23, of the District Court Transcript, respondent cites her damages as approximately $13,000.00 including cost. Furthermore, examining the entire record of this case this Court will see where petitioner did in-fact challenge

the jurisdiction of the District Court based on diversity of citizenship and jurisdictional amount. (See 28 U.S.C. Sec. 1332; and, the Docketing Sheet at December 4th, 1990; February 4th, 1990; May 29, 1991; and June 10, 1991).

Additionally, at page 131, lines 6-11 of the District Court Transcript, respondent admits that her legal expenses are being paid by her parents not by the respondent; i.e., she suffered no actual monetary damages or losses. Payment of legal fees by respondent's parents to her attorney, if any, is not at the hands of the petitioner but as a gift to respondent from her parents and do not qualify as a measure of damages.

Additionally, the custody hearing for respondent's minor daughter, Carla, did not take place on June 8th, 1990; consequently, respondent did not suffer any detriment at the hands of the petitioner. (See District Court Transcript at p. 154, lines 14-21, and

See Appendix I at p. I-20, lines 4-7 inclusive).

Effectively, respondent did not sustain the required $50,000 in damages or injuries necessary to bring a diversity action. (See District Court Transcript at p. 90, lines 13-23).

At p. 90, lines 13-23 and p. 91, lines 1-15 of the District Court Transcript the Respondent admits to "...about $13,000" in damages. However, said amount also includes attorney's fees in her underlying State case, Stowbridge, and $5,000 in moving expenses to move from Puerto Rico to Virginia, to remove the taint of contempt caused by her own hand.

On December 4, 1990, petitioner moved the District Court via a Fed. R. Civ. P. Rule 12(b) Motion to dismiss respondent's Complaint for lack of personal jurisdiction; lack of subject matter jurisdiction for

failing to cite actual damages of $50,000; failing to join a necessary third party under Rule 19, namely Mr. Kavrukov; failing to state a claim upon which relief can be granted with Affidavit, in light of the fact that respondent did not lose custody of her minor child, Carla, on June 8, 1990 as she alleged; and, that respondent's loss, if any, was caused at her own hand by her intentionally being in contempt of the State Court Order. Effectively, the respondent was seeking "equity" in the U.S. District Court with "unclean hands". (See Appendices F, G, H and I; and Docket Sheet at December 14, 1990).

The Court denied petitioner's Rule 12(b) Motion. Nevertheless, petitioner has continuously raised the issue that the District Court lacks subject matter jurisdiction; that respondent's claims should have been dismissed for failing to

name a necessary third party as required at Rules 12 and 19 of the Fed. R. Civ. P.; and, that respondent's contempt of the State Court's Order bars her from reaching equity in the State of Virginia Courts and in the U.S. District Courts.

Accordingly, petitioner, again comes to challenge the jurisdiction of the District Court in light of the fact that respondent admitted to having only "about $13,000" in damages and that said amount included attorney's fees to bring her claim before the District Court. Effectively, respondent's admission clearly is legally sufficient to support petitioner's claim that the U.S. District Court lacks subject matter jurisdiction over respondent's claims and the Court has no other course but to dismiss respondent's Complaint in light of petitioner's continued challenge of the District Court's jurisdiction. (See

District Court Transcript, p. 90, lines 13-23 and p. 91, lines 1-15; and Docket Sheet at December 14, 1990).

Accordingly, by the U.S. District and Appeals Courts refusing to dismiss respondent's Complaint where she admits to having only "about $13,000" in damages prior to her Complaint being filed with the U.S. District Court, the Courts have abused their discretion by not granting the petitioner's Motion to dismiss. Legally, respondent's Complaint should be dismissed in light of the respondent's admission.

H. Whether Or Not The U.S. District Court Arbitrarily And Capriciously Exercised Jurisdiction Over The Instant Case In Light Of The Fact That The Respondent Fail To Join A Necessary Third Party, Mr. Ted Kavrukov, The Respondent's "Expert Witness", Over Petitioner's

Objections And Challenges Via Petitioner's Fed. R. Civ. P., Rule 12(b) Motion To Dismiss _____ .

During the trial of the instant case, respondent's "expert witness", Mr. Kavrukov, a Virginia attorney, was asked on cross examination whether or not he was in-fact allowed to withdraw from the underlying case Stowbridge v. Stowbridge, supra.. Kavrukov at p. 174, line 7 through p. 175, line 14, of the District Court Transcript answered:

BY MR. TIJERINA:

Q. Were you allowed to withdraw on June the 8th?

A. The judge told me that he would sign the order if I left the order with him. I left the order with him, and I left the courtroom.

THE COURT: How did you interpret that?

THE WITNESS: I interpreted that as I being allowed to withdraw. The judge

simply said leave the order here and I'll sign it.

THE COURT: And the order was to what effect?

THE WITNESS: The order was relieving me from representation in the case....

THE COURT: Your testimony, am I correct, Mr. Kavrokov, is that you didn't represent her after that day?

THE WITNESS: That's correct, your Honor....

However, Appendix I, attached hereto, at p. I-26, line 13 through p. I-30, line 2, clearly reflects that Kavrukov was being less than truthful with the Court:

MR. COOK: May I respond, Your Honor?

THE COURT: Yes, sir.

MR. COOK: Thank you. I appreciate the difficulty Mr. Patkus finds himself in coming into this case so late. I do not appreciate, however, representations

regarding what I knew or didn't know which are totally erroneous.

The reference to Judge Brown is completely misleading, Your Honor. This case was noticed for June 8th, a praecipe was filed with the Clerk's office asking that it be placed on your docket as has been requested of counsel by the Clerk's office. Notwithstanding the filing of that praecipe that it be heard by you because it needed to be heard by you, the case was placed on Judge Brown's docket. I met with Mr. Kavrokov in Judge Brown's courtroom, I endorsed his order because frankly I've been there, I know what it's like to have a client who no longer communicates with you.

I endorsed his order, he endorsed my decree of divorce and in front of

Judge Brown when he called the case I indicated that it had to be heard by you.

Judge Brown heard absolutely nothing with regard to the motion to withdraw, made no oral rulings regarding Mr. Kavrokov's withdrawal.

I brought the file down here, Mr. Kavrokov decided that he didn't want to waste any more time on this case, which I can also understand because I imagine he hasn't been paid, and he left.

Your Honor told me that you would not enter his order and requested that I inform Mr. Kavrokov which I did by telephone that afternoon and I confirmed it by letter to him on the 13th, a copy of which I have as well.

To say that I know that Mr. Kavrokov was no longer of record because of

something Judge Brown said is totally erroneous....

Effectively, Mr. Cook, a Virginia attorney, informed Kavrukov telephonically and in writing that he, Kavrukov, was not allowed to withdraw from the underlying case. Furthermore, Mr. Patkus, respondent's attorney in the case at Bar, had first hand knowledge that Kavrukov was not allowed to withdraw from Stowbridge, supra.. Yet, when the Court asked Kavrukov if his motion to withdraw was heard. Kavrukov answered in the affirmative. An answer which is not supported by the facts.

Accordingly, since Kavrukov was in-fact respondent's attorney on June 8, 1990 and on July 20, 1990, he was and continues to be a necessary third party in respondent's claim against petitioner. Therefore, the District Court abused its discretion when it refused to grant petitioner's Motion to dismiss

respondent's claim for failure to join a necessary third party.

I. Whether Or Not The U.S. District Court Arbitrarily And Capriciously Refused To Dismiss Respondent's Claim, Upon Petitioner's Motion To Dismiss, Against The Respondent In Light Of The Fact That Respondent Entered The U.S. District Court With "Unclean Hands" Via Her Contempt Of A State Court Order.

Respondent entered the District Court with "unclean hands". Respondent admits at page 68 of the District Court Transcript, lines 11-14, that she left Virginia to evade its jurisdiction.

In Brown v. Kittle, 225 Va. 451, 303 S.E.2d 864 (1983); McNeir v. McNeir, 178 Va. 285, 16 S.E.2d 632 (1941), the Virginia Courts held that, ""[u]nder equitable

doctrine of "unclean hands," party is denied relief because of his own inequitable conduct."" And, that, "[w]ithholding of equitable relief to punish wrongdoer may be approved in cases involving issues of family law, but not where rights of children are prejudiced by the result."

Effectively, on June 8th, 1990, there was no evidence before the State Court for the Circuit of Fairfax County that respondent would have been granted permanent custody of Carla or visitation rights to see her older daughter Andrea. Respondent did not comply with the State Court's order of having a psychological evaluation by Dr. Samenow, or allowing her spouse, Mr. Stowbridge visitation of Carla. As a matter of fact, respondent admitted leaving the jurisdiction of the Virginia Courts to evade its Order. (See District Court Transcript at p. 68, lines 11-18).

Respondent presented no evidence that the underlying case would have been decided in her favor. The record is clear the respondent presented nothing that would be required for her to maintain temporary custody of Carla or obtain custody of Andrea. I.E., respondent failed to present the required psychological report from Dr. Samenow, home studies, financial statements, school grades, testimony from teachers or other witnesses to attest to respondent's and Carla's relationship to each other and their peers. Consequently, the trier of fact could not effectively rule as to whether or not the underlying case would have been decided in respondent's favor as required in

Stewart v. Hall, 770 F.2d 1267 (4th Cir. 1985).

Furthermore, on May 14 and June 18, 1990, the Virginia Court of Appeals upheld the Fairfax County Circuit Court Decree granting

Mr. Stowbridge permanent custody of his daughters Carla and Andrea. (See Appendices F, G, H and I). The Virginia Court of Appeals found that respondent was in-fact represented by Mr. Kavrukov; respondent was in contempt of the Fairfax County Court; and that respondent was presently unfit.

Effectively, the U.S. District Court is bound by the substantive laws generated by the Virginia Court of Appeals in Stowbridge. Therefore, respondent's claims as to petitioner should be dismiss in line with Stewart v. Hall, 770 F.2d 1267 (4th Cir. 1985) and Stowbridge, supra.. (See Appendices F, G, H, I and J).

Accordingly, by not dismissing or vacating the judgment against the petitioner the Federal Courts has held petitioner to a double standard whereby the Federal Courts do not have to follow the substantive law of the state in which they sit. Such rational

and action on the part of the Federal Courts is a clear abuse of discretion. [See Erie Railroad Co v. Tompkins, 304 U.S. 64 (1938)]

In Vandenbark v. Owens-Illinois Glass Co., 311 U.S. 538 (1941) where this Court held that the Federal Courts are bound by the substantive rulings of the state's highest court. Even if a State decision is handed down after the Federal trial Court's decision, a Court of Appeals must apply the state ruling. This Court went on to say that if no decision on point by the highest state court, the Federal Court should look to the decisions of lower State Courts or, if there are none, to relevant dicta and analogous decisions in that State, and to decisions in other influential or neighboring, jurisdictions. Effectively, the Federal Courts must adopt the rule that it believes the State Court would adopt.

At Bar, respondent, because of her

contempt to of the State Court Decree, would not have been able to seek equity and be granted custody of her minor daughters. Therefore the U.S. District Court abused its discretion by not holding to Virginia State substantive law.

J. Whether On Not Petitioner Can Be Held Liable For A State Hearing That Did Not Occur; Specifically, The June 8th, 1990 State Court Hearing, Did Not Take Place As Respondent Contends.

Respondent did not lose temporary custody of her daughter, Carla, at the June 8, 1990 State Court Hearing in Stowbridge, supra, contrary to her and Mr. Kavrukov's testimony on the record (See Appendix I, p. I-9, lines 2-10, p. I-20, lines 4-7, and See District Court Transcript at p. 154, line 18-21); effectively, respondent's matter was set for final disposition on July 20th, 1990 (See

Appendix I).

Effectively, since the custody hearing for respondent's minor daughter, Carla, did not take place on June 8th, 1990; respondent did not suffer any detriment at the hands of the petitioner. (See District Court Transcript at p. 154, lines 14-21, and See Appendix I at p. I-20, lines 4-7).

K. The Decision Below Concerns An Important Issues Affecting The Right To Due Process And Privileges And Immunities Guaranteed By The U.S Constitution, Virginia Constitution, and Virginia Statutes To Individuals Not Citizens Of The State Of Virginia _____ .

In Maryland Casualty Co. v. Price, et al., 231 Fed. 397 (4th Cir. 1916), this Court held that in a legal malpractice

action for the plaintiff to recover against the defendant attorney, the plaintiff must prove; (1) the attorney's employment, (2) defendant's neglect of a reasonable duty, and (3) that defendant's negligence resulted in and was the proximate cause of plaintiff's loss. Furthermore, in Byrd v. Martin, Hopkins, Lemon and Carter, P.C., 564 F.Supp. 1425 (W.D. Va. 1983), the District Court held that in diversity legal malpractice actions Virginia law requires the Court to assess the merits of the underlying claim.

> Accordingly, if an attorney, in disregard of his duty, neglects to appear in a suit against his client, with the result that a default judgment is taken, it does not follow that the client has suffered damages, because the judgment may be entirely just, and one that would have been

rendered notwithstanding the efforts of the attorney to prevent it. (231 Fed. 402).

Here, respondent's claims are not supported by facts. By respondent's own Exhibits at Exhibit 20, the decision of the Virginia Court of Appeals reflects that respondent was in-fact represented by her Virginia attorney, Mr. Ted Kavrukov, respondent's expert witness. Furthermore, there exist sufficient evidence which reflects that respondent did not lose permanent custody of her daughter, Carla, on June 8, 1990. (See Appendix I). The State Court in the underlying case Stowbridge did not hear the merits of the issue of permanent custody of Carla to the respondent on June 8, 1990. The Honorable Judge Quinlan H. Hancock of the Circuit Court of Fairfax County did not sign an Order granting permanent custody of Carla to the respondent's former spouse, on June 8, 1990.

(See Appendix I at p. I-9, lines 1-14).

Furthermore, in United States v. Barge Shamrock, 635 F.2d 1108 (4th Cir. 1980); Furka v. Great Lakes Dredge & Dock Co., 755 F.2d 1085 (4th Cir. 1985); and, United States v. One 1971 Mercedes Benz, 542 F.2d 912 (4th Cir. 1976), this Circuit hold that generally the Court of Appeals does not pass on issues previously raised. However, where error is "plain" and refusal to treat it would result in denial of fundamental justice, this Court should decide it. (See 635 F.2d 1111; and 755 F.2d 1089).

At Miller v. Premier Corp., 608 F.2d 973 (4th Cir. 1979), this Circuit held that where error is "plain" and if the Court's refusal to consider such would result in the denial of fundamental justice then the Court will consider issues raised for the first time on appeal.

The Circuit also held that:

Despite plaintiffs' argument that defendant did not properly preserve question issue as to the sufficiency of evidence on fraud claim because of defendant's failure to move for a directed verdict prior to moving for judgment notwithstanding the verdict, fairness required that the Court of Appeals consider defendant's contentions respecting sufficiency of the evidence where no written motions were filed and oral motions were made in a colloquy that was too confusing to permit confident assessment. (608 F.2d 974)

Question whether evidence was sufficient to permit a jury rationally to find for plaintiffs on their common-law fraud claim was a question of law which, when presented to the Court of Appeals, was identical to the

question presented to the district court by motion for judgment n.o.v.. (608 F.2d 976).

In Modave v Long Island Jewish Medical Center, 501 F.2d 1065 (2d Cir. 1974), the Court held that a "fundamental error" may be considered on appeal even in absence of objection at trial where error is so serious and flagrant that it goes to the very integrity of the trial. (See 501 F.2d 1072). Furthermore, this Court in Ricard v. Birch, 529 F.2d 214 (4th Cir. 1975), held that traditionally, this Court "...does not pass on questions that were not considered by the District Court; however, orderly rules of procedure do not require sacrifice of the rules of fundamental justice." (See 215 at 529 F.2d 214).

At Washington Gas Light v. Virginia Electric & Power Co., 438 F.2d 248 (4th Cir. 1971), this Court held that, "...[i]f necessary to reach correct result, [this

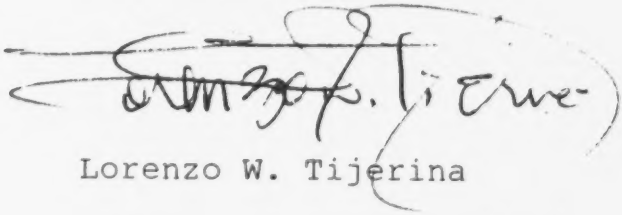
Court] may sua sponte consider points not presented to the district court and not even raised on appeal by any party." Respondent claims she had her witnesses lined up to testify; however, she failed to present one scintilla of such evidence. Effectively, the respondent's Virginia attorney and attorney of record, Mr. Kavrukov, her "expert witness" did not examine one piece of evidence that would show that the underlying case would have been decided otherwise. Accordingly, petitioner is asking this Court to examine the record and evidence as presented by the respondent and decide if in-fact the jury was provided enough evidence to decide whether the underlying case would have been decided otherwise had petitioner appeared.

CONCLUSION

This case presents important questions regarding diversity litigation brought

before the Federal Courts where the Federal Courts fail to apply state substantive law and therefore sets double standards as to the litigants in diversity cases.

Respectfully submitted,



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(301) 589-0112

Supreme Court, U.S.
FILED
MAR 22 1993
OFFICE OF THE CLERK

92-1542

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

LORENZO W. TIJERINA,
Petitioner,

v.

YVONNE Q. STOWBRIDGE,
Respondent.

APPENDICES TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

VOLUME I
APPENDICES A THROUGH H
AND APPENDICES J THROUGH K

Lorenzo W. Tijerina,
Pro Se
800 Taylor Street,
Suite 200
Arlington, VA 22203
(703) 276-0112

Dated: March 22, 1993

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Appendix A

FILED
14
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

A-1

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

YVONNE Q. STOWBRIDGE,
Plaintiff-Appellee,

v.

LORENZO W. TIJERINA,
Defendant-Appellant.

No. 92-1871

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
T. S. Ellis, III, District Judge.
(CA-90-1537-A)

Submitted: September 24, 1992

Decided: December 23, 1992

Before PHILLIPS, NIEMEYER, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Lorenzo W. Tijerina, Appellant Pro Se. William Donald Patkus, Fairfax Station, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

BEST AVAILABLE COPY

OPINION

PER CURIAM:

Lorenzo W. Tijerina appeals from the district court's order denying his Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b). Though Tijerina filed his motion, seeking relief under clauses (1), (2), (3), and (6) of the Rule, within one year of the jury verdict which found him liable on charges of legal malpractice, fraud, and gross negligence, he did not file within a reasonable time. *See McLawhorn v. John W. Daniel & Co.*, 924 F.2d 535, 538 (4th Cir. 1991); *Central Operating Co. v. Utility Workers of America*, 491 F.2d 245, 253 (4th Cir. 1974). Therefore, we do not find an abuse of discretion and affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

Appendix B

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
AUG - 5 1992
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

YVONNE Q. STOWBRIDGE,
Plaintiff-Appellee,

v.

LORENZO W. TIJERINA,
Defendant-Appellant.

No. 91-1148

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
T. S. Ellis, III, District Judge.
(CA-90-1537-A)

Submitted: April 10, 1992

Decided: July 28, 1992

Before RUSSELL, PHILLIPS, and NIEMEYER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Lorenzo W. Tijerina, Appellant Pro Se. William Donald Patkus, Fairfax Station, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

BEST AVAILABLE COPY

OPINION

PER CURIAM:

Lorenzo W. Tijerina appeals from the district court's entry of judgment against him based on a jury verdict that he committed legal malpractice, fraud, and gross negligence. On appeal, Tijerina challenges the district court's denial of a motion for judgment notwithstanding the verdict or, alternatively, for a new trial and raises numerous claims about jurisdictional defects and trial court errors. We affirm.

Tijerina, a member of the Pennsylvania bar who maintains a law office in Arlington, Virginia, appeared below and during this appeal pro se. Tijerina, as of the time of this trial in May 1991, was not licensed to practice law in Virginia. Mrs. Yvonne Stowbridge alleged in her complaint that she contacted Tijerina to represent her in a domestic relations proceeding in Fairfax County Circuit Court and that he accepted a retainer but failed to, among other things, enter an appearance for her. Ultimately, a decree of divorce was entered in favor of Mrs. Stowbridge's estranged husband and she lost custody of both her children.

Viewing the evidence in the light most favorable to Mrs. Stowbridge, as we are required to do in reviewing a motion for judgment notwithstanding the verdict, *Taylor v. Home Ins. Co.*, 777 F.2d 849, 854 (4th Cir. 1985), *cert. denied*, 476 U.S. 1142 (1986), we agree with the district judge and find that the evidence was sufficient to support the jury's verdict. In addition, the district court did not abuse its discretion in denying the motion for a new trial. Similarly, we find that none of the district court's rulings resulted in the denial of substantial justice. *See Ingram Coal Co. v. Mower Ltd. Partnership*, 892 F.2d 363, 366 (4th Cir. 1989). We find no merit in Tijerina's other claims. Accordingly, we affirm the judgment and the district court's order denying post-trial relief.*

*We also deny Appellee's Motion to Dismiss the appeal and Tijerina's Motion for a Stay of the district court judgment.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

Appendix C

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

YVONNE Q. STOWBRIDGE,)

Plaintiff,)

v.) NO. 90-1537-A

LORENZO W. TIJERINA,)

Defendant.)

)

O R D E R

This matter is before the Court on defendant's motion for judgment notwithstanding the verdict or in the alternative for a new trial.

A motion for judgment notwithstanding the verdict should be denied if there was substantial evidence presented to convince a jury of reasonable persons to arrive at its finding. See Hamilton v. 1st Source Bank, 895 F2d 159, 162 (4th Cir. 1990). In this

case there was abundant evidence from which a reasonable jury could find each of the elements of fraud, gross negligence, and legal malpractice against defendant. Defendants' arguments are meritless.1

It is the Court's duty to grant a new

---

1 In particular, defendant's claim that he had no notice that Mr. Kavrukov would be called as an expert witness is unpersuasive. Defendant, a member of the Pennsylvania bar, filed no timely discovery with respect to expert witnesses. Defendant could also have presented his own expert. He chose to do neither. There was, therefore, no unfair surprise. Defendant also knew that Mr. Kavrukov would testify as a fact witness. The Court exercised its discretion to permit Mr. Kavrukov to testify as an expert limited to subjects within his competence and experience.

trial if the verdict is (i) against the clear weight of the evidence, (ii) is based upon evidence which is false, or (iii) will result in a miscarriage of justice. See Gill v. Rollins Protective Services Co., 836 F.2d 194, 196 (4th Cir. 1987). Having considered the evidence and the credibility of the witnesses, the Court concludes that the verdict was supported by the clear weight of the evidence and further finds no basis on which to conclude that any witness testified falsely or that the jury's verdict will result in a miscarriage of justice. Accordingly, plaintiff's motion is DENIED.

The Clerk is directed to forward a copy of this Order to all counsel of record.

/S/

T.S. Ellis, III

U.S. District Judge

Alexandria, Virginia

June 13, 1991

Appendix D

D-1

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

YVONNE Q. STOWBRIDGE

JUDGMENT IN A CIVIL CASE

v.

LORENZO W. TIJERINA

CASE NO: CA90-1537-A

[x] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and jury has its verdict.

[] Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is hereby entered in favor of the plaintiff, Yvonne Q. Stowbridge, against the defendant, Lorenzo W. Tijerina.

Damages are awarded as follows:

compensatory - $40,750.00

punitive - $0

judgment is entered in accordance with the jury verdict.

May 30, 1991 Doris R. Casey, Clerk

_____ _____

Date Clerk

/S/

_____

(By) Deputy Clerk

Appendix E

E-1

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

YVONNE Q. STOWBRIDGE

v. CA 90-1537-A

LORENZO W. TIJERINA

SCHEDULING ORDER*

A pretrial conference will be held in this action on Thursday, March 21, 1991, at 12:00 noon.

All discovery must be concluded by Friday, March 15, 1991.

Unless a later time has previously been allowed, any defendant who has not filed an answer must do so within ten (10) days from the date of this order.

All motions shall be noticed for hearing on the nearest possible Friday and prior to

---

* This order is being mailed to local counsel only.

the pretrial conference. (See Local Rule 11.) Ten (10) working days notice is required for motions to dismiss, for summary judgment, and for judgment on the pleadings.

Counsel should bring to the pretrial conference a list of the witnesses proposed to be called, a list of exhibits, and the exhibits themselves, premarked and ready for filing. No witness or exhibit not so listed and filed will be premitted at trial except for impeachment or rebuttal purposes. Objections to exhibits must be noted (they will be ruled on at trial) at the conference; otherwise the exhibits shall stand admitted in evidence. In addition, counsel should meet prior to the conference, exchange the aforementioned lists and copies of the exhibits, and prepare and bring to the conference a written stipulation of all uncontested facts.

No witness, expert or otherwise, will be

permitted to testify who, in response to a request for his identity, has not been identified in time to allow his deposition to be taken or the substance of his knowledge ascertained, or, in the case of an expert, to allow the facts relied upon and opinions held by him to be obtained by F. R. Civ. P. 26(b)(4)(A) or deposition prior to the discovery cutoff.

Depositions, interrogatories, requests for documents and admissions, and answers and responses thereto, shall not be filed except on order of the court or for use in this action in connection with a motion for summary judgment or at the pretrial as an exhibit. F. R. Civ. P. 5(d).

In non-jury cases counsel should file with the clerk at the beginning of the trial written proposed findings of fact and conclusions of law.

The trial of this case will be set for a

day certain, not later than three to eight weeks from the date of the pretrial conference.

/S/

U.S. District Judge

Alexandria, Virginia
January 2nd, 1991

Appendix F

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the 18th day of June, 1991.

Filed: Aug 2 1991 Warren E. Barry, Clerk of the Circuit Court of Fairfax County, VA

Yvonne Quiones Stowbridge, Appellant,

against Record No. 1687-90-4

Circuit Court No. 110882

Robert G. Stowbridge, Appellee.

Upon a Petition for Rehearing

Before Judges Duff, Moon and Willis

This cause came before the panel upon appellant's petition for rehearing of our memorandum opinion of May 14, 1991, pursuant to Rule 5A:33 of the Supreme Court of Virginia. The petition is denied for the reasons which follow, such reasons being incorporated as a supplement to the aforesaid memorandum opinion.

Appellant asserts that the panel's opinion does not accurately reflect the issues presented on appeal in both the brief and argument. While the two issues stated in the opinion were inadvertently not phrased as presented in appellant's brief, they were considered as such by the panel. However, in the interest of accuracy the opinion is supplemented as follows:

(1) We do not find an abuse of discretion by the trial court's action on June 8, 1990, changing the pendente lite custody of Carla from her mother to her father. The initial pendente lite order of June 14, 1989, which awarded custody of Carla to Mrs. Stowbridge, also expressly provided for an evaluation of both parties and the minor children by Dr. Stanton E. Samenow, with a report to be made to the court within 60 days, if possible. The record shows this evaluation was rendered

impossible by Mrs. Stowbridge's actions in leaving the jurisdiction for Puerto Rico with Carla. At the time of the June 8, 1990 hearing, the trial court had received Dr. Samenow's comprehensive evaluation of January 11, 1990, which did not include interviews with Mrs. Stowbridge or Carla. The court also was aware from testimony taken a year earlier, that Mrs. Stowbridge was under the care of Dr. Granger, a psychiatrist, and was on medication. Her continued absence from the area could have well indicated that both her therapy and medication were in jeopardy.

Furthermore, although there exists a dispute between the parties as to proper notice of the various hearings, the record satisfies us that Mrs. Stowbridge was represented by counsel at all times and that proper notice was given to counsel of the hearing of June 8, 1990. No evidence was

presented by Mrs. Stowbridge. Under the totality of these circumstances, we find that the court had sufficient evidence before it to conclude that it would be in Carla's best interests to transfer her custody, pendente lite, to her father.

(2) Appellant next contends that it was an abuse of discretion for the trial court on July 20, 1990, to award permanent custody of both children to their father without a hearing as to the best interests of the children and as a punishment to the wife. The record reveals that the hearing of July 20, 1990, was properly noticed; that Mrs. Stowbridge did not appear nor offer any evidence. The court was then aware that Mrs. Stowbridge had taken Carla to Puerto Rico. This was the first time that the issue of permanent, as distinguished from pendente lite, custody was to be determined.

The court had before it the previous

testimony at the pendente lite hearing, the evaluation of Dr. Samenow, which referenced the nature and circumstances of Mrs. Stowbridge's violent propensities and her attempted suicide, as well as her subsequent disappearance. This evidence was ample to support a conclusion that Carla's best interests would be served by her return to the jurisdiction of the court and the custody of her father. Despite the inference that might be drawn from the language of the final decree, we believe it apparent that the court felt the best interests of the children would be served by placing their custody with their father. See Rowlee v. Rowlee, 211 Va. 689, 179 S.E2d 461 (1971).

A Copy,

Teste:

Patricia G. Davis, Clerk

By: /S/ Deputy Clerk

Appendix G

COURT OF APPEALS OF VIRGINIA

Present: Judges Duff, Moon and Willis

Argued at Alexandria, Virginia

Filed: Aug 2 1991 PM 3:48

Warren E. Barry, Clerk

of the Circuit Court of

Fairfax County, VA

YVONNE QUIONES STOWBRIDGE

v. Record No. 1687-90-4

ROBERT GRAF STOWBRIDGE

MEMORANDUM OPINION* BY JUDGE CHARLES H. DUFF

MAY 14, 1991

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

Quinlan H. Hancock, Judge

William D. Patkus, for appellant.

David K. Cook, for appellee.

---

* Pursuant to Code Sec. 17-116.010 this opinion is not designed for publication.

This appeal arises from the entry of a final decree of divorce, awarded custody of

the minor children of the parties to their father. Mrs. Stowbridge claims the trial court erred (1) in denying her motion for a continuance at the divorce hearing, and (2) in transferring custody of one of the minor children, whose custody had previously been awarded to Mrs. Stowbridge pendent lite, to Mr. Stowbridge.

The granting or denial of a continuance is within the sound discretion of the trial court, after considering all the circumstances of the case. McNew v. Dunn, 233 Va. 11, 353 S.E.2d 603 (9188). A trial court's decision regarding a continuance will not be disturbed on appeal unless it is plainly wrong. Mason v. Commonwealth, 7 Va. App. 339, 373 S.E.2d 603. The record reveals that Mrs. Stowbridge was well aware of the proceedings in this case, and that she left Virginia without informing her husband or her attorney of her whereabouts

while this matter was pending. We find, therefore, after considering all of the circumstances of the present case, that the trial judge did not abuse his discretion in refusing to continue the entry of the final decree.

We further find from the testimony presented during the pendente lite hearing, Dr. Samenow's evaluation, and the evidence regarding Mrs. Stowbridge's mental condition, that the trial judge had ample evidence before him to conclude that transferring custody of Carla to her father would be in the best interest.

Accordingly, the decision of the trial court is Affirmed.

A copy,

Teste:

Patricia G. Davis

/S/

Deputy Clerk

Appendix H

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

YVONNE QUINONES STOWBRIDGE:

Complainant :

vs : CHAN. NO. 110882

ROBERT GRAF STOWBRIDGE :

Defendant :

DECREE OF DIVORCE, A VINCULO MATRIMONII

THIS CAUSE came on to be heard this day upon the Bill of Complaint filed by Complainant; upon the Cross-Bill of Complaint filed by Defendant; upon the report of the Commissioner in Chancery, to which there are attached depositions of witnesses to be read in behalf of the Defendant; upon the findings of fact based upon the issues raised by the pleadings herein; upon the Defendant's Motion for custody of the minor children born of the marriage; and upon argument of Counsel; and

IT APPEARING TO THE COURT, independently

of the admissions of either party in the pleadings or otherwise, that the Complainant and the Defendant were lawfully married on October 8, 1976, in Bethesda, Maryland; that there were two children born of the marriage, namely, Andria Stowbridge, born September 9, 1977, and Carla Stowbridge, born January 15, 1981; that neither party is a member of the United States Armed Forces; that both parties are over the age of eighteen (18); that the Defendant is and has been an actual and bona fide resident of and domiciled in the County of Fairfax, Commonwealth of Virginia for more than six months immediately preceding the institution of this suit; that on or about April 10, 1989 the parties hereto separated and have lived separate and apart, without any cohabitation and without interruption from the period in time to and including the present date, and there is no hope or

possibility of any reconciliation between them; and that the Defendant is entitled to the relief prayed for; and, further,

IT APPEARING TO THE COURT that the best interest of the minor children would be served by their custody being awarded to the Defendant by virtue of the Complainant's complete violation of the pendente lite Order entered herein on June 14, 1989; and, further,

IT APPEARING TO THE COURT that Section 20-60.3 of the 1950 Code of Virginia, as amended, is inapplicable because neither party is directed to provide health insurance for the other or for the parties' children; nor to pay spousal or child support by Order of this Court or by separation agreement confirmed herein, it is

ADJUDGED, ORDERED AND DECREED that the Complainant's Bill of Complaint is hereby dismissed; that the Defendant is hereby

awarded a divorce, a vinculo matrimonii, from the Complainant on the ground that the parties have lived separate and apart for more than one year without any cohabitation and without interruption; and that the bonds of matrimony heretofore existing between said parties are hereby forever dissolved; and it is further

ADJUDGED, ORDERED AND DECREED that custody of the parties' minor children, namely, ANDRIA STOWBRIDGE, born September 9, 1977 and CARLA STOWBRIDGE, born September 15, 1981 is hereby awarded to the Defendant, ROBERT GRAF STOWBRIDGE; and that the Complainant, YVONNE QUINONES STOWBRIDGE, is hereby ordered to immediately return their daughter, CARLA STOWBRIDGE, to the custody of ROBERT GRAF STOWBRIDGE; and that the Complainant shall have no visitation with ANDRIA, except by telephone, until further Order of this Court.

AND THIS ORDER IS FINAL.

AND THIS CAUSE IS ENDED AND REMOVED FROM THE DOCKET ENTERED: July 20, 1990

/S/

QUINLAN H. HANCOCK, JUDGE

I ASK FOR THIS:

/S/

David K. Cook, Esq.
11480 Sunset Hills Road
Reston, VA 22090
Counsel for Defendant
703/689-2212

SEEN:

/S/

Ted Kavrukov, Esq.
2055 N. 15th Street,
Suite 300
Arlington, VA 22201
Counsel for Complainant

703/524-3333

Appendix J

J-1

David K. Cook

ATTORNEY AT LAW

11480 Sunset Hills Road

Reston, Virginia 22090

(703) 689-2212

June 13, 1990

Ted Kavrukov, Esq.

2055 N. 15th Street

Suite 300

Arlington, VA 22201

Re: Stowbridge v Stowbridge

Dear Mr. Kavrukov:

Pursuant to our telephone conversation, enclosed is the revised Decree of Divorce in accordance with Judge Hancock's ruling.

I would appreciate your endorsing the order at your earliest convenience and returning it to me so that I may submit it to Judge Hancock.

Thank you for your assistance.

Sincerely,

J-2

/S/

DAVID K. COOK

cc: Mr. Stowbridge

Appendix K

K-1

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

YVONNE Q. STOWBRIDGE,)

Plaintiff,)

v.) NO. 90-1537-A

LORENZO W. TIJERINA,)

Defendant.)

)

PLAINTIFF'S LIST OF WITNESSES

YVONNE Q. STOWBRIDGE

TED KAVRUKOV, ESQ.

MANUEL E. MORAZA CHOISNE

WILLIAM SPENCER

LORENZO W. TIJERINA

EDELMIRA E. TORIBIO

/S/

William D. Patkus, Esq.

12025 Rusty Road

K-2

Fairfax Station, VA 22039

(703) 830-9066

Counsel for Plaintiff

92-1542

No. _____

Supreme Court, U.S.
FILED
MAR 22 1993
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

LORENZO W. TIJERINA,
Petitioner,

v.

YVONNE Q. STOWBRIDGE,
Respondent.

APPENDICES TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

VOLUME II
APPENDIX I

Lorenzo W. Tijerina,
Pro Se
800 Taylor Street,
Suite 200
Arlington, VA 22203
(703) 276-0112

Dated: March 22, 1993

Appendix I

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

YVONNE Q. STOWBRIDGE,	)	
Complainant,	)	
-vs-	)	CHAN. NO. 110882
ROBERT G. STOWBRIDGE,	)	
Defendant.	)	

Circuit Courtroom 4G

Fairfax County Courthouse

Fairfax, Virginia

Friday, July 20, 1990

The above-entitled matter came on to be heard before the HONORABLE QUINLAN H. HANCOCK, Judge, in and for the Circuit of Fairfax County, in the Courthouse, Fairfax, Virginia, beginning at 11:20 o'clock a.m.

APPEARANCES:

On Behalf of the Complainant:

WILLIAM D. PATKUS, ESQUIRE

On Behalf of the Defendant:

DAVID K. COOK, ESQUIRE

C O N T E N T S

MOTION	PAGE
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P R O C E E D I N G S

(The Court Reporter was sworn.)

THE COURT: Stowbridge versus Stowbridge.

Mr. COOK: Your Honor, this matter comes before the Court again for entry of a decree of divorce incorporating an award of custody of two minor children born of the marriage to Mr. Stowbridge. You may recall, Your Honor, I was before the Court with Mr. Stowbridge on June 8th at which time you had before you a motion to transfer custody of the two minor children to Mr. Stowbridge based upon Mrs. Stowbridge's total contempt of the previous order entered by Your Honor in May or June of

last year.

THE COURT: This the lady who disappeared?

MR. COOK: Yes, sir.

And I think you have also had some contact from a judge in Puerto Rico requesting further information.

Following a very length custody hearing, pendente lite custody hearing requested by Mrs. Stowbridge, Your Honor ordered that Mr. Stowbridge would have custody of the eldest child, Andrea, with no visitation but by telephone on Mrs. Stowbridge's behalf.

That Mrs. Stowbridge would have custody of the younger daughter, Carla, with Mr. Stowbridge having rights of visitation on alternating weekends, alternating holidays and 30 days in the summer. You further ordered that the parties and the children submit to evaluation by Dr. Samanow. Very shortly thereafter, Your Honor, Mrs. Stowbridge fled the scene. And until Mr. Stowbridge was served with copies of a divorce complaint and a so-called immediate hearing or urgent hearing request from the court in Puerto Rico which he did not receive until within the last ten days he had no idea

where
13 Mrs. Stowbridge had fled with the younger daughter.
14 On June 8th we came before you then with a
15 request that the custody of Carla also be transferred to
16 Mr. Stowbridge and an endorsed decree of divorce endorsed
17 by Mrs. Stowbridge's counsel, Mr. Kavrokov, which only
18 made reference to the granting of the divorce.
19 You also had before you an endorsed order
20 allowing Mr. Kavrokov to withdraw as Mrs. Stowbridge's
21 counsel based upon Mr. Kavrokov's representation that he
22 had no communication from Mrs. Stowbridge other than to
23 tell him don't do anything more. But

that he in fact did

not know where she was located
After listening to Mr. Stowbridge on June 8th
you indicated to me that you would order custody of both
children -- I'm sorry, Mr. Stowbridge already has custody
of Andrea. That you would order custody of Carla also
transferred to Mr. Stowbridge, suggest that I incorporate
that in the divorce decree order. That you would not
enter Mr. Kavrokov's order withdrawing as counsel because
he had not attempted to notify Mrs. Stowbridge of his
intent to withdraw.
Asked that I so inform Mr. Kavrokov, sent
him the revised decree and then if for

whatever reason it could not be endorsed by Mr. Kavrokov, to come back and see you which is why we are here today. I have the decree of divorce, the original copy of which has been previously filed.

(Document handed to the Court)

MR. COOK: Which severs the bonds of matrimony between Mr. and Mrs. Stowbridge. Grants Mr. Stowbridge custody of Andrea with no visitation with Mrs. Stowbridge except by telephone which is merely a recital of your previous order. And granting him custody of Carla and requiring Mrs. Stowbridge to immediately return Carla to

the jurisdiction of this Court.

I have also here, Your Honor, a letter form Mr. Kavrokov dated June 16th which unfortunately wasn't post marked until the 19th, acknowledged receipt of the proposed decree but indicating once again that he didn't feel he could sign it because he had been instructed by his client not to do anything.

What would have been a two minute motion this morning is now a ten minute motion because I received a call from Mr. Patkus on Wednesday informing me that he has now entered his appearance on behalf of Mrs. Stowbridge.

And I believe it is his intent to ask you not to do anything at this point.

After he speaks I will undoubtedly have something to say in rebuttal.

MR. PATKUS: Good morning, Your Honor. My name is William Patkus.

Two days ago, on the 18th of this month I entered an appearance on behalf of Mrs. Stowbridge in this matter.

I have an order endorsed by Mr. Kavrokov for substitution of counsel which I would like to present to the Court, if I may.

THE COURT: Has your client endorsed it?

MR. PATKUS: My client has not endorsed it, no, Your Honor, Mr. Kavrokov has. I spoke with Mr. Kavrokov yesterday and he agreed to the substitution.

Your Honor, my client has received no notice of this hearing today either constructively or actually.

Mr. Kavrokov was served with notice of this hearing, however, at the time that Mr. Kavrokov was served with the notice of this hearing Mr. kavrokov's oral motion to withdraw as counsel had already been granted by Judge Brown.

Mr. Kavrokov has received nothing from the Court according to his representation to me yesterday to advise him that his motion to withdraw before Judge Brown has not been entered. It was endorsed by both counsel and following Judge Brown's oral granting of his motion and the presentation of the endorsed order to Judge Brown, Mr. kavrokov left the Court and was not at the June 8th hearing before this Court, before Your Honor. Mr. Kavrokov received notice of today's hearing for the entry of decree of divorce, he did nothing with that because he doesn't know where Mrs. Stowbridge is

23 located.

8

The Court was aware that he did not know where Mrs. Stowbridge was located. He was under the impression that his oral motion had been granted. he had been advised by Mr. Cook, he stated, that Your Honor had said that he wanted to stay in the case, wouldn't release him from the case until further proceedings, however, he had received nothing form the Court. Mrs. Stowbridge did not become aware that this hearing was taking place today until I contacted her and advised her on the 18th when I came to court and filed my appearance and reviewed the file.

I then subsequently, the night of the 18th of July, I contacted her and advised her of these proceedings.

Now, Your Honor, I understand that Mrs. Stowbridge moved to Puerto Rico very shortly after the original custody hearing.

It is not true, however, that she has not been in contact with either her husband or that he was unaware of her location.

Mr. Stowbridge has been contact with his daughter, Carla, he has been as late as April 3rd he was in telephone contact with Mrs. Stowbridge.

When this matter was filed, the notice of this hearing before this Court was filed, Mr. Cook and Mr. Stowbridge were well aware that Mr. Kavrokov thought that he was no longer counsel of record. They were well aware that he did not know where Mrs. Stowbridge was located.

However, both Mr. Cook and Mr. Stowbridge were aware of Mrs. Stowbridge's location, her address and the name of her counsel in Puerto Rico, Mr. Miratza. Because on July 6th of this month Mr. Stowbridge was personally served a copy of the Puerto Rican

complaint.

Now, Your Honor, I have only been in this matter, my first contact with Mrs. Stowbridge was the night of the 16th of July. I have only been in this matter for four days, less that four days Mrs. Stowbridge does not have notice of this -- did not have any sufficient notice at least of this hearing. I as new counsel have not had time to familiarize myself with the case much less prepare for this hearing. I am requesting at this time, Your Honor, that this matter be continued.

THE COURT: For what purpose?

MR. PATKUS: So that I can properly confront

the case and oppose the entry of a decree of divorce in this matter and certainly oppose the awarding of custody of the minor child, Carla, to Mr. Stowbridge.

THE COURT: Well, even if this decree was entered awarding him custody, if she saw fit to do so she would certainly have the right to petition the Court for a change of custody; would she not?

MR. PATKUS: That is correct, Your Honor. However, I believe that before this Court should award custody the Court must take into consideration the best interests of the child. And I don't believe that there's enough evidence before this

Court to make a determination as to what the best interest of at least the child, Carla, are. Mrs. Stowbridge has obtained a psychiatric evaluation of Carla. It's my understanding that the doctor who performed that evaluation is forwarding a copy of that evaluation to this Court. I don't know if the Court has received it or not. I don't know exactly when it was sent. As I say, I'm very new in this matter Your Honor, I don't believe that it would be to anyone's detriment and it would be in everyone's

23 interests certainly to fully explore the matter of custody

before the Court makes a decision which must of course be based upon the best interest of the child. And I believe, Your Honor, my client does not have sufficient notice, did not receive sufficient notice of this hearing, and is entitled to a continuance.

THE COURT: The notice indicates that notice of the proceeding here today was sent to her counsel of record who for that matter, Mr. Patkus, is still counsel of record for her, that is Mr. Kavrokov.

MR. PATKUS: Yes, Your Honor, however, the Court was aware as was Mr. Cook at the

time that the
notice of this matter was sent that Mr. Kavrokov had not
any knowledge of the location of his client.
I would point out one thing, Your Honor. My client on the first of June contacted another counsel
in Virginia and was under the impression as of a least
the fourth of June that that attorney had entered an
appearance in this matter and was vigorously pursuing this
matter on her behalf before this Court and at the hearing
before the Commissioner in Chancery. She thought that that attorney was -- she had
retained him, he has had conversations and correspondence

23 with both herself and Mr. Miratza, her

Puerto Rican

attorney, and they were under the impression that he was confronting this matter, had entered his appearance in this matter and was vigorously pursuing this matter. They recently, by the way that's why they contacted me, they very recently learned that that person, that attorney, not only had not entered an appearance in this matter but that he also is not a member of the Virginia Bar. As soon as Mrs. Stowbridge learned of that she contacted me and asked me to enter an appearance and pursue this matter on her behalf.

THE COURT: Thank you, Mr. Patkus.

MR. COOK: May I respond, Your Honor?

THE COURT: Yes, sir.

MR. COOK: Thank you.

I appreciate the difficulty Mr. Patkus finds himself in coming into this case so late. I do not appreciate, however, representations regarding what I knew or didn't know which are totally erroneous.

The reference to Judge Brown is completely misleading, Your Honor. This case was noticed for June 8th, a praecipe was filed with the Clerk's office asking that it be placed on your docket as has been requested of

counsel by the Clerk's office.
Notwithstanding the filing of that praecipe
that it be heard by you because it needed to be heard by
you, the case was placed on Judge Brown's docket. I met
with Mr. Kavrokov in Judge Brown's courtroom, I endorsed
his order because frankly I've been there, I know what
it's like to have a client who no longer communicates with
you
I endorsed his order, he endorsed my decree of
divorce and in front of Judge Brown when he called the
case I indicated that it had to be heard by you.

Judge Brown heard absolutely nothing with regard to the motion to withdraw, made no oral rulings regarding Mr. Kavrokov's withdrawal. I brought the file down here, Mr. Kavrokov decided that he didn't want to waste any more time on this case, which I can also understand because I imagine he hasn't been paid, and he left. Your Honor told me that you would not enter his order and requested that I inform Mr. Kavrokov which I did by telephone that afternoon and I confirmed it by letter to him on the 13th, a copy of which I have as well. To say that I know that Mr. Kavrokov was no

longer of record because of something Judge Brown said is totally erroneous. To say that Mr. Stowbridge and I knew where Mrs. Stowbridge was is totally erroneous. Mr. Stowbridge has had no communication from his wife other than by telephone calls initiated from her and correspondence which has been routed through a post office box in Fairfax. Until he received the pleadings from Puerto Rico which is the one thing that counsel has said is accurate, were received on July 6th, he had no idea where she was. And even in the pleadings it's not stated where

she's residing other than to give what I imagine is a province, Mayaguez, in Puerto Rico. And I have a copy of those, Your Honor, you may have received them already from the Court. If I could bring this forward.

(Document handed to the Court)

Yes, he has had communication from his spouse, telephone calls initiated from her, he has had communications with Carla, she has allowed him to speak with her when she calls.

But to say that he knew or we knew where she was located is totally unfounded because we didn't.

23 Mr. Stowbridge has not seen Carla since April

of 1989. Mrs. Stowbridge is in total contempt of the order which you entered in this case previously by denying him his visitation and by refusing to go forward with the evaluations as ordered by this Court, by Dr. Samanow. She has fled from the jurisdiction of this Court. She has prevented the visitation, the carrying out of this order. And now says to this Court, I ask you to help me. Your Honor, she asked you to help her in May of 1989 when there was an emergency custody hearing. And after listening to all the evidence you found no

indication of any abusive contact on the part of Mr. Stowbridge, if you had you wouldn't have ordered 30 days consecutive visitation with Carla during the summer. You found that there was a definite problem between Mrs. Stowbridge and the older daughter, Andrea. Which is why you ordered that there be no visitation between the two of them except by telephone pending further evaluation and a further hearing in this Court, which she has prevented. She has now filed pleadings in Puerto Rico that are again half truths and out and out lies. She

23 states in the document entitled, "Urgent Motion," she

informs Court in Puerto Rico in referencing the case filed in this country, she says, I'm quoting, "In that case," in paragraph two of her urgent motion, "In that case the Court of Virginia issued an order on May 25, 1989 awarding the custody of said minor daughter to the Plaintiff, "referring to Carla, a half truth. You did file a pendente lite, you indicated that there would be rights of visitation and that you wanted further evaluation. She says in paragraph three, "The proceedings in the aforementioned action did not

continue in the
normal course." They certainly didn't. She fled the
scene. She is in contempt of this Court. Your Honor, Mr. Stowbridge has done everything
he possibly can. You have the report from Dr. Samanow.
And now she's saying, I'm in Puerto Rico, I want him to
come to Puerto Rico to have to exercise his visitation. I
want him to come to Puerto Rico to defend anything
further. I don't think it's just, I don't think it's
proper, I don't think it's equitable and I don't think she
deserves any further consideration from this Court given

her actions.

THE COURT: All right. Mr. Patkus, anything

else you want to say?

MR. PATKUS: Yes, Your Honor.

I'm not before this Court, Your Honor, to ask that Mr. Stowbridge go the Puerto Rico or to in any way to try to proceed on the action in Puerto Rico. I'm before this Court to represent my client before this Court and in proceedings only before this Court as per the instructions of my client.

My client has asked me to seek a continuance because she did not receive adequate notice. I'm not here to defend whatever pleadings she set forth in Puerto Rico.

I don't know why my client is in Puerto

Rico. I don't know if there's been a hearing on that matter. I only know that my client is concerned about her children, she wants to protect her rights as per her children. She is certainly hopeful, as am I, that this Court will not -- because as Mr. Cook states she is in contempt of this Court and certainly there is no question but that she is in at least technical contempt of an order of this Court, for whatever reason. We are merely requesting that this matter be continued for a short period of time so that we might confront the issues. Not to punish Mrs.

Stowbridge for

being in contempt of the Court but to settle this matter justly and in the best interest of these children.

THE COURT: There are no issues left in this case, Mr. Patkus. This case has been heard by the Commissioner and it's ready for the entry of a final decree.

If you care to endorse this decree notwithstanding the fact that Mr. Kavrokov is still technically counsel of record, I assume he's not here, you are welcome to do so, noting such exceptions as you like.

MR. PATKUS: Your Honor, I have not seen the

decree in this matter but I understand that it awards permanent custody of the minor child, Carla, to the father.

THE COURT: Would you give this back to Mr. Cook, please.

(Document handed to counsel.)

MR. COOK: Your Honor, maybe a copy of it was filed with the Court when I filed the motion, if he reviewed the file --

MR. PATKUS: That is correct, Your Honor, I reviewed the file but it was after 5:00 o'clock and there was no one present to obtain a copy of it.

THE COURT: Well, as I indicated you are certainly welcome to look at the decree and endorse it if you wish to do so.

MR. PATKUS: Very well. I do not wish to do so, Your Honor. I would also further point out to the Court that I believe that my client did not receive either actual nor constructive notice of this --

THE COURT: I already told you the final --

MR. PATKUS: -- note my exception and upon instructions of my client I shall --

THE COURT: We've already covered that, Mr. Patkus, as I indicated. The notice that is in the file indicates that

Mr. Cook sent notice of this hearing to her counsel of record, Mr. Kavrokov.

MR. PATKUS: Knowing full well, Your Honor, that the counsel of record was not in contact.

THE COURT: Well, as I say, that issue is at an end. We've already covered that.

MR. PATKUS: Very well, Your Honor.

THE COURT: If you do not care to endorse the decree if you will pass it back up, please.

(Document handed to the Court.)

MR. PATKUS: May I also pass up an order of substitution of counsel which is endorsed by Mr. Kavrokov?

THE COURT: I'm not going to enter that unless your client endorses it also. When you speak of notice I assume that you had some contact with her but I want her, if she wants to change attorneys it's going to be necessary for her to endorse that order before I enter it.

MR. PATKUS: Very well, thank you, Your Honor.

MR. COOK: Thank you, Your Honor.

THE COURT: The decree has been entered.

MR. COOK: Thank you, Your Honor.

(Whereupon, at approximately 11:43

o'clock

13 a.m., the hearing in the above-entitled matter was

14 concluded.)

CERTIFICATE OF REPORTER

I, Deborah G. Stoll, the Certified Verbatim Reporter who was duly sworn to well and truly report the foregoing proceedings, do hereby certify that they are true and correct to the best of my knowledge and ability; and that I have no interest in said proceedings, financial or otherwise, nor through relationship with any of the parties in interest or their counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of July, 1990.

/S/

_____

Deborah G. Stoll

Court Reporter